

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLIED MATERIALS, INC.,
Plaintiff,
v.
DEMARAY LLC,
Defendant.

Case No. [5:20-cv-05676-EJD](#)

**ORDER DENYING APPLIED
MATERIALS, INC.'S
ADMINISTRATIVE MOTION FOR
LEAVE TO LODGE NEW
DECLARATORY JUDGMENT
COMPLAINT**

Re: Dkt. No. 48

Plaintiff Applied Materials, Inc. (“Applied”) filed this current action against Demaray LLC (“Demaray”) seeking declaratory relief under the patent laws of the United States. Now pending before this Court is Applied’s administrative motion for leave to lodge a new declaratory judgment complaint against Demaray. (“Mot.”), Dkt. No. 48. Having considered the parties’ moving and response papers, the Court hereby **DENIES** Applied’s administrative motion.

I. RELEVANT BACKGROUND

On September 1, 2020, Applied filed its operative complaint and shortly thereafter, filed its motion for preliminary injunction to enjoin Demaray from proceeding with patent infringement actions filed against two of Applied’s customers in the Western District of Texas. *See* Dkt. Nos. 13, 14. The Court took Applied’s motion for preliminary injunction under submission without oral argument on November 10, 2020. Dkt. No. 35. While Applied’s motion was under submission, Demaray filed a motion to dismiss Applied’s operative complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) on November 23, 2020. As of this date, the Court has not yet ruled on Demaray’s motion to dismiss. On December 23, 2020, however, the Court

Case No.: [5:20-cv-05676-EJD](#)

**ORDER DENYING APPLIED MATERIALS, INC.’S ADMINISTRATIVE MOTION FOR
LEAVE TO LODGE NEW DECLARATORY JUDGMENT COMPLAINT**

denied Applied's motion for preliminary injunction after concluding that Applied did not establish that the Court had subject matter jurisdiction over its declaratory judgment action. *See* Order Denying Motion for Preliminary Injunction ("Order") Dkt. No. 47 at 12.

Following the Order denying its motion for preliminary injunction for lack of subject matter jurisdiction, Applied proceeded to file this administrative motion on December 24, 2020. Applied asserts that since the filing of Applied's operative complaint, Demaray's conduct in this action and Demaray's infringement actions against Applied's customers confirms that there is a substantial controversy between Applied and Demaray, of sufficient immediacy and reality regarding the patents at issue. Mot. at 2. Applied next claims that because subject matter jurisdiction is determined by the facts as they existed at the time of the operative complaint, and recent developments post-date the operative complaint in this action, Applied has filed a separate updated complaint as a new action to account for the facts as they exist today. Mot. at 2; *see also* *Applied Materials, Inc. v. Demaray LLC*, 3:20-cv-9341 (N.D. Cal.). However, Applied argues that it would be more judicially efficient to have this new complaint become the operative complaint in this action (or alternatively in a new action before this Court) in light of the Court's familiarity with the facts and procedural posture of this action. *Id.*

Accordingly, Applied seeks the following relief in its administrative motion: (1) leave to lodge the concurrently filed declaratory judgment complaint, (2) that the Court permit the new complaint to become the operative complaint in this action, and (3) that the Court deny as moot Demaray's pending motion to dismiss. *Id.* at 3. Alternatively, Applied proposes taking the following steps: (1) voluntarily dismissing the operative complaint in this action, (2) proceeding with a new-filed action based on the concurrently filed complaint, and (3) seeking to relate the new action with this case under Local Rule 3-12.¹ *Id.*

¹ At the time of this Court's Order, Applied has already filed an administrative motion to consider whether cases should be related pursuant to Local Rule 3-12. *See* Dkt. No. 52. Demaray did not file an opposition. The Court will address this administrative motion in a separate order.

II. DISCUSSION

Under Civil Local Rule 7-11, the Court recognizes that a party may require a Court order with respect to “miscellaneous administrative matters, not otherwise governed by a federal statute, federal or local rule, or standing order of the assigned judge.” Civil L.R. 7-11. Although titled an administrative motion, Applied’s request “for leave to lodge a new declaratory judgment complaint” is not the proper subject of an administrative motion. *See id.* Federal Rule of Civil Procedure 15(a)(1)(2) states that after a party has already amended its complaint once as a matter of course, the “party may amend its pleading only with the opposing party’s written consent or the court’s leave.”

Here, despite Applied’s concurrent filing of its new declaratory judgment in a separate action, its request for leave to lodge the new complaint is essentially a request for leave to amend the operative complaint in this case. Applied should have raised its request as a properly noticed motion under Federal Rule of Civil Procedure Rule 15(a)(1)(2) but chose instead to improperly make its request in the form of an administrative motion for leave to lodge. Because Federal Rule of Civil Procedure Rule 15(a)(1)(2) appropriately governs, the Court must deny Applied’s request for leave to lodge its new declaratory judgment complaint as well as its request for the new declaratory judgment complaint to become the operative complaint in this action. The Court also denies Applied’s request that Demaray’s pending motion to dismiss be denied as moot.

III. CONCLUSION

Based on the foregoing, the Court hereby rules that Applied’s administrative motion for leave to lodge a new declaratory judgment complaint is **DENIED**.

IT IS SO ORDERED.

Dated: January 6, 2021



EDWARD J. DAVILA
United States District Judge

Case No.: [5:20-cv-05676-EJD](#)

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